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Comments

Comment on Microsoft Antitrust Case.

- Elliot Glaysher

To Whom It May Concern,

As both a member of the public who has been watching this case very carefully, a contributing member of the open source community, and as someone who has been programming for over six years, I feel it is my civic duty to inform you to several problems with the proposed antitrust settlement in the Microsoft case. The proposed settlement addresses does not address any of Microsoft's past anticompetitive behavior, does not force Microsoft to atone for it's past transgressions, and appears to be, as Red Hat CEO Matthew Szulik says, "an agreement reached for the purpose of expediency, not for ensuring an adequate remedy."

Not only does the settlement fail to address any of Microsoft's behavior outside of coercing cooperation from original equipment manufactures (OEM), but it also specifically gives Microsoft a government enforced monopoly, with the loophole-ridden Section III.J. Using emotionally and politically loaded phrases like "anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems" gives all the ammunition Microsoft needs to maintain it's monopoly, as these systems are vital components that allow Microsoft to leverage it's monopoly, while at the same time, causing problems for Microsoft's largest competitor: Open Source Software.

Open Source Software[1] (OSS) is a new form of software development, relying around a model based on community involvement and the principle that the underlying source code[2] should be freely available for all to see, modify, and distribute. This is significant as this allows anyone to contribute to an Open Source project. It also must be noted that the open nature of source code means that the full details on the inner workings of a program or protocol are available to any programmer who wants them, as will become significant latter. Because of the uniqueness of the Open Source Model, special attention must be taken in the settlement to make sure that the does not harm Microsoft's largest competitor as a side-effect.

But let us look at certain problems with the settlement that are problematic:

First, I must examine the term "authentication systems" in Section III.J.1.a, and show why this term is problematic by looking at some recent actions by Microsoft. When Microsoft released Windows 2000, Microsoft included support for an authentication protocol developed at MIT called Kerberos. The problem was that Microsoft deviated from the protocol specifications ever so slightly as to only introduce incompatibilities with other implementations of Kerberos. This means that Windows 2000 only grants access if the Kerberos "ticket" (the method of authentication in a Kerberos security model) was issued by a Windows 2000 server. It would reject what would be valid tickets from other vendor's versions of Kerberos for the sole effect of customer lock-in.

[1] For a detailed description of the Open Source model, please read Eric S. Raymond's *The Cathedral and the Bazaar*, available in print format from O'Reilly Press, or http://tuxedo.org/~esr/writings/cathedral-bazaar/cathedral-bazaar/.

[2] Source Code is the programming instructions that describe the intricate operation of a program.

Microsoft's later actions show why this situation is dangerous: Microsoft insisted that the changes were trade secrets. Microsoft later released information about their modifications to the Kerberos protocol under the condition that the contents be kept a secret. The agreement was mutually exclusive with the development of Open Source Software, where anyone and everyone has access to the source code, where there are no secrets.

Another fine example would be the wording regarding "anti-piracy" and "digital rights management." Section III.J.1, in effect, gives Microsoft a monopolistic position in regards to digital content, as Microsoft will argue that their digital media file formats are inseparable from their digital rights management scheme and will allow competitors access to neither.

For example, what would happen if an Open Source project wanted to extend one of the many Open Source video players on an operating system other than Windows to play Microsoft's video format, including files protected under Microsoft's digital rights management software? Microsoft would deny the project the specifications, as the openness of the code would allow anyone who wished to know how the digital rights management system worked to find out easily. At the same time, Microsoft would be under no obligation to help the other operating system by writing a video player that would play Microsoft's video format, allowing Microsoft to maintain it's monopoly.

In fact, Microsoft has already kept others from using their digital video formats. Microsoft owns patent #6,041,345, which is a patent on the ASF file format. In May of 2000, Microsoft forced Avery Lee, the main author of the popular Open Source project VirtualDub to remove support for their ASF files. This is dangerous because ASF has become the dominant streaming format on the Internet, and only Microsoft can control it. ASF files are now only legal on Microsoft desktops.

In both examples, Microsoft was able to use patents or trade secrets to prevent competition, and force customer lock-in to Microsoft products.

Also troubling is Section III.J.2, as it gives Microsoft the right to discriminate on whom it to licenses information to. Microsoft can easily say that a competitor "has a history of software counterfeiting or piracy or willful violation of intellectual property rights" and can deny them access to vital interoperability information. I would be surprised if Microsoft *doesn't* use this as an excuse to deny information to Linux vendors, as they have already used the unorthodox development process of Open Source Software as the basis of flat out calling it "un-American." Jim Allchin, Microsoft Corporation's Platforms Group Vice President, has also said "Open source is an intellectual-property destroyer,"[3] in a blatant attempt to break down the distinctions between software pirates and OSS writers.[4] Microsoft will, beyond a shadow of a doubt, abuse this provision if it's allowed to stand as it is.

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[3] http://news.cnet.com/news/0-1003-200-4833927.html?tag=mn_hd

[4] The argument is fundamentally flawed, as software pirates take the work of others, while OSS programmers freely give out their work as an act of generosity, both creating new intellectual-property, and holding to the American values of volunteerism and community service.

Moreover, Section III.E gives Microsoft even more ways to hurt the competition. The use of the terms "reasonable and non-discriminatory" may, at first, not appear to be problematic, yet one must consider the people who write Open Source Software: The majority of Open Source programmers write these programs in their spare time, as non-corporate entities for the benefit of the community. The mere term "reasonable" is relative. Is it "reasonable" for a large business like Apple or Sun Microsystems? Is it "reasonable" for a small start-up that has great ideas but can't implement them due to these fees? Is it "reasonable" for a middle-class programmer who wants to write software to better the community? Any licensing scheme that Microsoft may come up with which requires monetary compensation to Microsoft in return for information will, by definition, be discriminatory, as Microsoft's largest competitor will be unable to afford the licensing fees for the information necessary to compete.

This proposal is woefully inadequate. Between the combination of Section III.E and Section III.J, we, in effect, have a settlement that gives Microsoft full license to continue it's anti-competitive practices with the government's blessing.

A good settlement to halt Microsoft's anticompetitive and destructive behavior must specifically assert the following points:

1. Microsoft must be forced to open any and all technical specs to anyone who asks for any reason. Microsoft must not have the right to discriminate who has access to this information. This solves the problems with Section III.E and III.J, and allows true interoperability to exist, in contrast to the façade presented in the current settlement. Technical specs includes, but isn't limited to:
    a. All file formats that Microsoft saves information to, including Word Documents, Excel Spreadsheets, et cetera
    b. All digital media file formats. I mention this separately to reiterate the loopholes opened by Section III.J.1.
    c. All network protocols, including authentication and encryption protocols
    d. All extensions and modifications to existing file formats and network protocols. (Recall that Microsoft's version of Kerberos was only a modification to an open standard.)
    e. The Windows API (Application Programming Interface) in its entirety
2. Microsoft must also comply with the following terms regarding the licensing of said information.
    a. Microsoft may not be allowed to require monetary compensation for the previously mentioned technical information. While Microsoft may argue that it must be compensated for this information, there is no way in which the information can be reasonably priced for everyone, especially for those that have the largest chance of breaking Microsoft's monopoly.
    b. Microsoft may not use the excuse of trade secrets, patents, or any other forms of Intellectual Property protection to withhold information from competition, or to break compatibility. Microsoft has used both patents and trade secrets as an excuse to bully software developers, as seen with

the above Kerberos example, and Microsoft's threatening of Avery Lee of the VirtualDub project.

3. New computers must be sold "naked," meaning without an operating system or other bundled software. This would allow people to install the operating system of their choice, whether that be Windows, Linux, BeOS, et cetera. The operating system and related software become an added cost; meaning people who would rather use an alternative operating system would not be forced to pay Microsoft for software they wouldn't use.
4. Microsoft must not have the right to sell its software to anyone at a lower price then anyone else. This means that the price of a computer without Microsoft Windows would be drastically lower then the cost of a computer containing Microsoft software. This is necessary, as the difference in price between a computer loaded with Microsoft's software and a "naked" computer would otherwise be insignificant.
5. Any settlement that requires Microsoft to make financial reparations, must specifically forbid Microsoft from repaying the debt in the form of Microsoft software.

In closing, I'd like to direct you to the points of Red Hat CEO Matthew Szulik, one of which I mentioned in the opening of this letter:

"...contrary to the statements of the US Department of Justice in its impact statement discussing the Consent Decree, the remedies settlement embodied in the Consent Decree fails to achieve the ends mandated by the Court for the following reasons:

- it fails to deny Microsoft the fruits of its statutory violations,
- it fails to ensure that competition is likely to result,
- it was an agreement reached for the purpose of expediency, not for ensuring an adequate remedy and,
- it establishes an untenable precedent for future antitrust cases."

Thank you,

Elliot Glaysher

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